

**INDIANA**  
**MONEY TRANSMITTERS**  
**ACT**

IC 28-8-4

As Amended July 1, 2001



**NON-DEPOSITORY DIVISION**  
**DEPARTMENT OF FINANCIAL INSTITUTIONS**

402 West Washington Street, Room W-066  
Indianapolis, Indiana 46204

# CHAPTER 4

## MONEY TRANSMITTERS

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## 28-8-4-1 Application of chapter

Sec. 1. (a) This chapter does not apply to the following:

- (1) The United States or an instrumentality of the United States.
- (2) The state, a political subdivision of the state, or an instrumentality of the state or of a political subdivision of the state.
- (3) A bank, a bank holding company, an industrial loan and investment company, a credit union, a building and loan association, a savings and loan association, a savings association, a savings bank, a mutual bank, or a mutual savings bank organized under the laws of any state or the United States.

(b) Unless otherwise provided in this chapter, this chapter does not apply to an authorized delegate of a person:

- (1) licensed under this chapter; and
- (2) acting within the scope of authority conferred by a written contract conforming to the requirements of [section 49](#) of this chapter.

*As added by P.L.42-1993, SEC.85. As amended by P.L.172-1997, SEC. 23.*

## 28-8-4-2 Applicant

Sec. 2. As used in this chapter, "**applicant**" means a person filing an application for a license under this chapter. *As added by P.L.42-1993, SEC.85.*

## 28-8-4-3 Authorized delegation

Sec. 3. As used in this chapter, "**authorized delegate**" means an entity designated by a licensee to:

- (1) sell or issue payment instruments; or
- (2) engage in the business of transmitting money on behalf of the licensee.

*As added by P.L.42-1993, SEC.85.*

#### **28-8-4-4 Control**

Sec. 4. As used in this chapter, "**control**" means:

- (1) ownership; or
- (2) the power to vote at least twenty-five percent (25%);

of the outstanding voting securities of a licensee or controlling person. *As added by P.L.42-1993, SEC.85.*

#### **28-8-4-5 Controlling person**

Sec. 5. As used in this chapter, "**controlling person**" means a person in control of a licensee. *As added by P.L.42-1993, SEC.85.*

#### **28-8-4-6 Department**

Sec. 6. As used in this chapter, "**department**" means the members of the department of financial institutions. *As added by P.L.42-1993, SEC.85.*

#### **28-8-4-7 Director**

Sec. 7. As used in this chapter, "**director**" has the meaning set forth in IC 28-11-2-1. *As added by P.L.42-1993, SEC.85.*

#### **28-8-4-8 Executive officer**

Sec. 8. As used in this chapter, "**executive officer**" means a person who is or performs the duties of the licensee's:

- (1) president;
- (2) chief executive officer;
- (3) treasurer; or
- (4) chief financial officer.

*As added by P.L.42-1993, SEC.85.*

**28-8-4-9 Key shareholder**

Sec. 9. As used in this chapter, "**key shareholder**" means:

- (1) a person who owns; or
- (2) a group of persons acting as a unit that own;

at least twenty-five percent (25%) of a class of an applicant's stock. *As added by P.L.42-1993, SEC.85.*

**28-8-4-10 Licensed activities**

Sec. 10. As used in this chapter, "**licensed activities**" means the activities:

- (1) that a licensee engages in within Indiana; and
- (2) for which a licensee has obtained a license under this chapter.

*As added by P.L.42-1993, SEC.85.*

**28-8-4-11 Licensee**

Sec. 11. As used in this chapter, "**licensee**" means a person licensed under this chapter. *As added by P.L.42-1993, SEC.85.*

**28-8-4-12 Material litigation**

Sec. 12. As used in this chapter, "**material litigation**" means litigation that under generally accepted accounting principles is considered significant to the financial health of a business and would be required to be referenced in a corporation's or business's annual audited financial statements, report to shareholders, or a similar document. *As added by P.L.42-1993, SEC.85.*

**28-8-4-13 Money transmission**

Sec. 13. As used in this chapter, "**money transmission**" means:

- (1) the sale or issuance of payment instruments; or
- (2) engaging in the business of:
  - (A) receiving money for transmission from; or
  - (B) transmitting money to;

any location and by any means, including a payment instrument, wire, facsimile, or electronic transfer. *As added by P.L.42-1993, SEC.85.*

**28-8-4-14 Outstanding payment instrument**

Sec. 14. As used in this chapter, "**outstanding payment instrument**" means a payment instrument issued by the licensee that:

- (1) had been sold in the United States;
- (2) has been sold:
  - (A) by the licensee; or
  - (B) by an authorized delegate of the licensee and has been reported to the licensee as having been sold; and
- (3) has not been paid by or on behalf of the licensee.

*As added by P.L.42-1993, SEC.85.*

**28-8-4-15 Payment instrument**

Sec. 15. (a) As used in this chapter, "**payment instrument**" means:

- (1) a check;
- (2) a draft;
- (3) a money order;
- (4) a traveler's check; or
- (5) an instrument or written order for the transmission or payment of money; sold or issued to one (1) or more persons, whether such instrument is negotiable.

(b) As used in this chapter, "**payment instrument**" does not include:

- (1) a credit card voucher;
- (2) a letter of credit; or
- (3) an instrument that is redeemable by the issuer in goods or services.

*As added by P.L.42-1993, SEC.85.*

**28-8-4-16 Permissible investments**

Sec. 16. As used in this chapter, "**permissible investments**" means:

- (1) cash;
- (2) certificates of deposit or other debt obligations of a financial institution, either domestic or foreign;

- (3) bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as banker's acceptances, that are eligible for purchase by member banks of the Federal Reserve system;
- (4) an investment bearing a rating of one (1) of the three (3) highest grades as defined by a nationally recognized organization that rates such securities;
- (5) investment securities that are obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest by the United States, or any obligations of any state, municipality, or any political subdivision thereof;
- (6) shares in a money market mutual fund, interest-bearing bills or notes or bonds, debentures or stock traded on any national securities exchange or on a national over-the-counter market, or mutual funds primarily composed of such securities;
- (7) a demand borrowing agreement or agreements made to a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange;
- (8) receivables that are due to a licensee from the licensee's authorized delegates under a contract described in [section 49](#) of this chapter, which are not past due or doubtful of collection; or
- (9) an investment that is approved by the director.

*As added by P.L.42-1993, SEC.85.*

#### **28-8-4-17 Person**

Sec. 17. As used in this chapter, "**person**" means an individual, a partnership, an association, a joint stock association, a trust, or a corporation. *As added by P.L.42-1993, SEC.85.*

#### **28-8-4-18 Security device**

Sec. 18. As used in this chapter, "**security device**" includes a surety bond, an irrevocable letter of credit, or other similar security device. *As added by P.L.42-1993, SEC.85.*

#### **28-8-4-19 The state**

Sec. 19. As used in this chapter, "**the state**" means Indiana. *As added by P.L.42-1993, SEC.85.*

#### **28-8-4-20 License requirement**

Sec. 20. (a) A person may not engage in the business of money transmission without a license required by this chapter.

(b) An application for a license must be submitted on a form prescribed by the department and must include the information required by the department.

(c) The director may request that the applicant provide evidence of compliance with this section at the time of application or after a license is issued. Evidence of compliance includes, but is not limited to, an official report of criminal activity from the state where the applicant resides.

*As added by P.L.42-1993, SEC.85. As amended by P.L.134/63-2001, SEC. 22.*

#### **28-8-4-21 Form of license applications; security devices; fees**

Sec. 21. (a) An application for a license under this chapter must be:

- (1) in writing;
- (2) under oath; and
- (3) in a form prescribed by the director.

(b) An application for a license must be accompanied by the following:

- (1) A security device as required by [section 27](#) of this chapter or a deposit as required by section 29 of this chapter. If requested, the director may permit corporations that are directly or indirectly commonly controlled to engage in activities under this chapter pursuant to a single security device filed under section 27 of this chapter or a single deposit filed under [section 29](#) of this chapter.
- (2) A nonrefundable license fee as provided in [section 32](#) of this chapter.

*As added by P.L.42-1993, SEC.85.*

#### **28-8-4-22 Corporate license applications**

Sec. 22. An application filed by a corporate applicant must comply with the provisions of sections [24](#) and [25](#) of this chapter. *As added by P.L.42-1993, SEC.85. As amended by P.L.122-1994, SEC.104.*

#### **28-8-4-23 Noncorporate license applications**

Sec. 23. An application filed by an applicant that is not a corporation must comply with sections [24](#) and [26](#) of this chapter. *As added by P.L.42-1993, SEC.85. As amended by P.L.122-1994, SEC.105.*

#### **28-8-4-24 Contents of license applications**

Sec. 24. An application must contain the following:

- (1) The name of the applicant.
- (2) The applicant's principal address.
- (3) A fictitious or trade name, if any, used by the applicant in the conduct of its business.
- (4) The location of the applicant's business records.
- (5) The history of the applicant's material litigation and criminal convictions for the five (5) years before the date of the application.
- (6) A description of:

- (A) the activities conducted by the applicant;
  - (B) the applicant's history of operations; and
  - (C) the business activities in which the applicant seeks to be engaged in Indiana.
- (7) A list identifying the applicant's proposed authorized delegates in Indiana.
- (8) A sample authorized delegate contract, if applicable.
- (9) A sample form of payment instrument, if applicable.
- (10) The location or locations at which the applicant and its authorized delegates propose to conduct the licensed activities in Indiana.
- (11) The name and address of the clearing bank or banks on which the applicant's payment instruments will be drawn or through which such payment instruments will be payable.
- (12) Documents revealing that the applicant has a net worth of at least one hundred thousand dollars (\$100,000), calculated in accordance with generally accepted accounting principles.
- (13) In addition to the requirements of subdivision (12), an applicant that sells payment instruments at more than one (1) location or through authorized delegates must have an additional net worth of the lessor of:
- (A) fifty thousand dollars (\$50,000) for each location in Indiana;
  - (B) fifty thousand dollars (\$50,000) for each authorized delegate located in Indiana; or
  - (C) five hundred thousand dollars (\$500,000).

*As added by P.L.42-1993, SEC.85.*

## **28-8-4-25 Contents of corporate license applications**

Sec. 25. In addition to the items listed in [section 24](#) or this chapter, if an applicant is a corporation, the applicant must provide the following items and information relating to the applicant's corporate structure:

- (1) State of incorporation.
- (2) Date of Incorporation.
- (3) A certificate from the state in which the applicant was incorporated stating that the corporation is in good standing.
- (4) A description of the corporate structure of the applicant, including the following:
  - (A) The identity of the parent of the applicant.
  - (B) The identity of each subsidiary of the applicant.
  - (C) The names of the stock exchanges in which the applicant, the parent, and the subsidiaries are publicly traded.

(5) The:

- (A) name;
- (B) business address;
- (C) residence address; and
- (D) employment history for the five (5) years preceding the date of the application;

for each executive officer, key shareholders, and officer or manager who will be in charge of the applicant's licensed activities.

(6) The:

- (A) history of material litigation for the five (5) years preceding the date of the application; and
- (B) the history of criminal convictions for the five (5) years preceding the date of the application;

for each executive officer, key shareholders, and director of the applicant.

(7) Except as provided in subdivision (8), copies of the applicant's audited financial statements for the current year and, if available, for the preceding two (2) years, including a:

- (A) balance sheet;
- (B) statement of income or loss;
- (C) statement of changes in shareholder equity; and
- (D) statement of changes in financial position.

(8) If the applicant is a wholly owned subsidiary of:

- (A) a corporation publicly traded in the United States, financial statements for the current year or the parent corporation's Form 10K reports filed with the United States Securities and Exchange Commission for the preceding three (3) years may be submitted with the applicant's unaudited financial statements; or
- (B) a corporation publicly traded outside the United States, similar documentation filed with the parent corporation's non-United States regulator may be submitted with the applicant's unaudited financial statements.

(9) Copies of filings, if any, made by the applicant with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States, not more than one (1) year before the date of filing of the applications.

*As added by P.L.42-1993, SEC.85.*

## **28-8-4-26 Contents of noncorporate license applications**

Sec. 26. In addition to the items listed in [section 24](#) or this chapter, if an applicant is not a corporation, the applicant must provide the following:

- (1) The:
  - (A) name;
  - (B) residence address;
  - (C) business address; and
  - (D) personal financial statement for the five (5) years preceding the date of the application; and
  - (E) employment history for the five (5) years preceding the date of the application;

for each principal and each person who will be in charge of the applicant's licensed activities.

- (2) Evidence that the applicant is registered or qualified to do business in Indiana.
- (3) The date on which the applicant registered or qualified to do business in Indiana.
- (4) The:
  - (A) history of material litigation for the five (5) years preceding the date of the application; and
  - (B) the history of criminal convictions for the five (5) years preceding the date of the application; for each individual having an ownership interest in the applicant, and each individual who exercises supervisory responsibility with respect to the applicant's activities.
- (5) Copies of the applicant's audited financial statements for the current year and, if available, for the preceding two (2) years, including a:
  - (A) balance sheet;
  - (B) statement of income or loss; and
  - (C) statement of changes in financial position.

*As added by P.L.42-1993, SEC.85.*

## **28-8-4-27 Form and amount of security devices**

Sec. 27. (a) Except as provided in [section 29](#) of this chapter, an application must be accompanied by a security device that secures the faithful performance of the obligations of the licensee to receive, handle, transmit, and pay money in connection with the:

- (1) sale and issuance of payment instruments; or
  - (2) transmission of money.
- (b) The security device required under Subsection (a) must:
- (1) be in an amount as provided under subsection (c);
  - (2) run to the state; and

(3) be in a form acceptable to the director.

(c) The security device must be in an amount calculated as follows:

STEP ONE: Subtract one (1) from the number of locations where the applicant proposes to engage in business under the license.

STEP TWO: Multiply the difference determined under STEP ONE by ten thousand dollars (\$10,000).

STEP THREE: Add one hundred thousand dollars (\$100,000) to the product determined under STEP TWO.

STEP FOUR: Pay the amount that is the lesser of:

(1) The sum determined in STEP THREE; or

(2) two hundred thousand dollars (\$200,000).

(d) If the security device filed is a bond, the aggregate liability of the surety shall not exceed the principal sum of the bond. *As added by P.L.42-1993, SEC.85.*

### **28-8-4-28 Cancellation of security devices**

Sec. 28. (a) The security device provided for in [section 27](#) of this chapter shall remain in effect until cancellation.

(b) A security device may be canceled not more than thirty (30) days after written notice is sent by first class mail to the director.

(c) Cancellation of a security device does not affect any liability incurred or accrued during the period when the security device was in effect. *As added by P.L.42-1993, SEC.85.*

### **28-8-4-29 Deposits in lieu of security devices**

Sec. 29. (a) In lieu of a security device, the licensee may deposit with the director, or with banks in the state as the licensee may designate and the director may approve, one (1) or more of the following:

(1) Cash.

(2) Interest-bearing stocks and bonds.

(3) Notes.

(4) Debentures.

(5) Other obligations:

(A) of the United States or any agency or instrumentality of the United States;

(B) guaranteed by the United States;

(C) of the state, a city, a county, a town, a village, a school district, or an instrumentality of the state; or

(D) guaranteed by the state.

(b) Each item deposited under subsection (a) must be calculated based on the lessor of:

- (1) the principal amount; or
- (2) the market amount.

(c) The aggregate amount deposited under subsection (a) must be not less than the amount required under [section 27](#) of this chapter.

(d) The deposits made under subsection (a) shall be held to secure the faithful performance of the obligations of the licensee to receive, handle, transmit, and pay money in connection with the:

- (1) sale and issuance of payment instruments; and
- (2) transmission of money.

(e) An applicant that makes a deposit under subsection (a) is entitled to receive all interest and dividends from the deposit.

(f) An applicant that makes a deposit under subsection (a) has the right, with the approval of the director, to substitute other securities for those deposited, and shall be required to do so on written order of the director made for good cause shown. *As added by P.L.42-1993, SEC.85.*

### **28-8-4-30 Duration of security devices and deposits; reduction; elimination**

Sec. 30. (a) Except as provided in subsection (b), a security device filed under [section 27](#) of this chapter and a deposit made under [section 29](#) of this chapter must remain in place:

- (1) during the time a licensee engages in money transmission operations in Indiana; and
- (2) for five (5) years after the date a licensee ceases money transmission operations in Indiana.

(b) Prior to the expiration of the five (5) years in subsection (a)(2), the director may permit a licensee to:

- (1) reduce a security device or a deposit to the amount of the licensee's outstanding payment instruments that remain in Indiana; or
- (2) eliminate a security device or deposit, if the licensee has no outstanding payment instruments in Indiana.

*As added by P.L.42-1993, SEC.85.*

### **28-8-4-31 Substitution of security devices**

Sec. 31. On or after the date when the licensee ceases money transmission operations in Indiana, the director may permit a licensee to substitute a letter of credit or other form of security device acceptable to the director for the security device or deposit. *As added by P.L.42-1993, SEC.85.*

**28-8-4-32 Application fees**

Sec. 32. (a) An application must be accompanied by a nonrefundable application fee as fixed by the department under IC 28-11-3-5.

(b) If a license is granted, the application fee constitutes the license fee for the applicant's activities through December 31 of the year in which the license is granted. *As added by P.L.42-1993, SEC.85.*

**28-8-4-33 Conduct of business; insurances; permissible investments; good standing**

Sec. 33. (a) A license granted under this chapter permits a licensee to conduct business:

- (1) at one (1) or more locations directly or indirectly owned by the licensee; or
- (2) through one (1) or more authorized delegates.

(b) Each licensee shall maintain a policy of insurance issued by an insurer authorized to do business in Indiana that insures the applicant against loss by a criminal act or act of dishonesty. The principal sum of the policy shall be equivalent to one-half (1/2) of the required security device required under [section 27](#) of this chapter or deposit required under [section 29](#) of this chapter.

(c) Except as provided in subsection (d), a licensee must at all times possess permissible investments with an aggregate market value calculated in accordance with generally accepted accounting principles of not less than the aggregate face amount of all outstanding payment instruments issued or sold by the licensee or an authorized delegate of the licensee in the United States.

(d) The director may waive the permissible investments requirement in subsection (c) if the dollar value of a licensee's outstanding payment instruments does not exceed:

- (1) the security device posted by the licensee under [section 27](#) of this chapter; or
- (2) the deposit made by the licensee under [section 29](#) of this chapter.

(e) A licensee that is a corporation must at all times be in good standing with the secretary of state of the state in which the licensee was incorporated. *As added by P.L.42-1993, SEC.85.*

**28-8-4-34 Commonly controlled corporations**

Sec. 34. The director may permit corporations that are directly or indirectly commonly controlled to engage in activities under this chapter, pursuant to a security device required under [section 27](#) of this chapter or a deposit required under [section 29](#) of this chapter. *As added by P.L.42-1993, SEC.85.*

**28-8-4-35 Investigations by director; issuance of licenses; controlling persons; denial of applications**

Sec. 35. (a) The director shall begin an investigation after an application is complete.

(b) The director shall investigate the:

- (1) financial condition and responsibility;

(2) financial and business experience; and

(3) character and general fitness;

of an applicant.

(c) The director may conduct an onsite investigation of the applicant, the reasonable cost of which shall be borne by the applicant.

(d) The director shall issue a license to an applicant authorizing the applicant to engage in the licensed activities in Indiana for a term expiring December 31 of the year in which the license is issued if the director finds that:

(1) the applicant's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community; and

(2) the applicant has fulfilled the requirements imposed by this chapter.

(e) On application, the director shall determine whether a particular person qualifies as a controlling person. The director may waive any or all requirements of this chapter pertaining to a controlling person for a good cause shown.

(f) If the director finds that an applicant does not satisfy the requirements in subsection (d), the director may deny the application. The director must set forth the reasons for the denial in writing and send a copy of the reasons to the applicant. *As added by P.L.42-1993, SEC.85.*

### **28-8-4-36 Contesting denial of license applications**

Sec. 36. (a) An applicant that is denied a license under [section 35\(f\)](#) of this chapter may, not more than thirty (30) days after receipt of written notice of the denial, contest the denial by serving a response on the director.

(b) The serving of a response on the director automatically stays the denial of the license until a final ruling in the hearing is announced.

(c) The director shall set a date for a hearing not less than sixty (60) days after service of the response. A later date may be set with the denied applicant's consent. *As added by P.L.42-1993, SEC.85.*

### **28-8-4-37 License renewal fees**

Sec. 37. The department shall fix an annual fee for renewal of a license under IC 28-11-3-5. The annual fee shall be paid on or before January 1 of each year. *As added by P.L.42-1993, SEC.85.*

### **28-8-4-38 Renewal of licenses**

Sec. 38. (a) A licensee may renew a license by complying with the following:

(1) Filing with the director the annual report in the form that is prescribed by the director and sent by the director to each licensee not less than three (3) months immediately preceding the date established by the director for license renewal. The report must:

(A) include:

- (i) a copy of the licensee's most recent audited consolidated annual financial statement, including a balance sheet, a statement of income or loss, a statement of changes in shareholder's equity, and a statement of changes in financial position; or
- (ii) if the licensee is a wholly owned subsidiary, the consolidated audited annual financial statement of the parent corporation filed with the licensee's unaudited annual financial statement;

(B) the number of payment instruments sold by the licensee in Indiana, the dollar amount of those instruments, and the dollar amount of outstanding payment instruments sold by the licensee calculated from the most recent quarter for which data is available before the date of the filing of the renewal application, but in no event more than one hundred twenty (120) days before the renewal date;

(C) material changes to the information submitted by the licensee on its original application that have not been reported previously to the director on any other report required to be filed under this chapter;

(D) a list of the licensee's permissible investments; and

(E) a list of the locations within Indiana at which business regulated by the chapter will be conducted by either the licensee or its authorized delegate.

(2) Paying the annual renewal fee described under [section 37](#) of this chapter.

(b) A licensee that:

- (1) does not file a renewal report or pay the renewal fee by the renewal filing deadline set by the director; and
- (2) had not been granted an extension of time to do so by the director;

shall be notified by the director, in writing, that a hearing will be scheduled at which the licensee will be required to show cause why its license should not be suspended pending compliance with these requirements. If after the hearing the license is not suspended, the director may require a daily late fee beginning with the date the renewal report or annual renewal fee is required by this chapter in an amount fixed by the department under IC 28-11-3-5. *As added by P.L.42-1993, SEC.85.*

### **28-8-4-39 Written reports following bankruptcies or reorganization, license revocations or suspensions, and felony indictments and convictions**

Sec. 39. A licensee shall file a written report with the director not later than fifteen (15) days after the occurrence of one (1) or more of the following events:

- (1) The filing for bankruptcy or reorganization by the licensee.
- (2) The institution of revocation or suspension proceedings against the licensee by a state or governmental authority with regard to the licensee's money transmission activities.
- (3) A felony indictment of the licensee or of a key officer or director of the licensee related to money transmission activities.
- (4) A felony conviction of the licensee or a key officer or director of the licensee related to money transmission activities.

The written report must give details concerning the event. *As added by P.L.42-1993, SEC.85.*

#### **28-8-4-40 Reporting of changes of control and acquisitions**

Sec. 40. (a) A change of control or an acquisition of a licensee that is:

- (1) a publicly traded corporation; or
- (2) a direct or an indirect subsidiary of a publicly traded corporation;

must be reported to the director in writing not later than fifteen (15) days after the change in control or acquisition.

(b) A change in control or an acquisition of a licensee that is not:

- (1) a publicly traded corporation; or
- (2) a direct or an indirect subsidiary of a publicly traded corporation;

must be reported to the director in writing not later than thirty (30) days before the change of control or the acquisition.

(c) Changes in control of a licensee require written notice to the director. Approval considerations will be made under the terms of [section 35](#) of this chapter. *As added by P.L.42-1993, SEC.85.*

#### **28-8-4-41 Onsite examinations**

Sec. 41. (a) The director may conduct an annual onsite examination of a licensee or an authorized delegate of a licensee.

(b) If the director determines that a reasonable belief exists that a person is operating without a valid license or in violation of this chapter, the director has the authority to investigate and examine the records of that person. The person examined must pay the reasonably incurred costs of the examination.

(c) Except as provided in [section 42\(a\)\(2\)](#) of this chapter, the director must give the licensee forty-five (45) days written notice before conducting an onsite examination.

(d) If the director determines, based on the licensee's financial statements and past history of operations in Indiana, that an onsite examination is unnecessary, the director may waive the onsite examination.

(e) If the director concludes that an onsite examination of a licensee is necessary, the licensee shall pay all reasonably incurred costs of such examination.

(f) An onsite examination may be conducted in conjunction with examinations to be performed by representatives of agencies of another state or states. In lieu of an onsite examination, a director may accept the examination report of an agency of another state, or a report prepared by an independent accounting firm. A report accepted under this subsection shall be considered for all purposes, to be an official report of the director. *As added by P.L.42-1993, SEC.85.*

#### **28-8-4-42 Requests for additional financial data; onsite examinations without notice**

Sec. 42. (a) If the director has a reasonable basis to believe that a licensee or an authorized delegate of a licensee is in violation of this chapter, the director may:

- (1) request financial data from the licensee in addition to that required under [section 38\(a\)\(1\)](#) of this chapter; or
- (2) conduct an in-state onsite examination of an authorized delegate's operation or a licensee's location without prior notice to the authorized delegate or licensee.

(b) All reasonable costs of an examination incurred under subsection (a)(2) shall be paid by the:

- (1) authorized delegate whose operation is examined; or
- (2) the licensee whose location is examined. *As added by P.L.42-1993, SEC.85.*

### **28-8-4-43 Making, keeping, and preserving of records**

Sec. 43. A licensee shall make, keep, and preserve the following for three (3) years:

- (1) A record or records of payment instruments sold.
- (2) A general ledger containing all asset, liability, capital income, and expense accounts for which a general ledger shall be posted at least monthly.
- (3) Settlement sheets, if received from authorized delegates.
- (4) Bank statements and bank reconciliation records.
- (5) Records of outstanding payment instruments.
- (6) Records of each payment instrument paid within the three (3) years.
- (7) A list of the names and addresses of all of the licensee's authorized delegates, as well as a copy of each authorized delegate's, as well as a copy of each authorized delegate's contract.

*As added by P.L.42-1993, SEC.85.*

### **28-8-4-44 Maintenance and availability of records**

Sec. 44. (a) The records maintained under [section 43](#) of this chapter shall be:

- (1) maintained in conformity with generally accepted accounting principles and practices in a manner that will enable the director to determine whether the licensee is complying with the provisions of this chapter; and
- (2) made reasonably available to the director.

(b) The director shall determine the sufficiency of the records and whether the licensee has made the required information reasonably available. *As added by P.L.42-1993, SEC.85.*

**28-8-4-45 Maintenance of records at foreign locations**

Sec. 45. Records maintained under [section 43](#) of this chapter may be maintained at a location that is outside Indiana if the records are made accessible to the director after the director has given fifteen (15) days written notice. *As added by P.L.42-1993, SEC.85.*

**28-8-4-46 Compliance with money laundering statutes and regulations**

Sec. 46. The licensee or an authorized delegate shall comply with all state and federal money laundering statutes and regulations. *As added by P.L.42-1993, SEC.85.*

**28-8-4-47 Confidentiality of information**

Sec. 47. (a) Notwithstanding any other provision of law, all information or reports obtained by the director from an applicant, a licensee, or an authorized delegate, whether obtained through reports, applications, examination, audits, investigation, or otherwise, including but not limited to:

- (1) all information contained in or related to:
  - (A) examination;
  - (B) investigation;
  - (C) operation; or
  - (D) condition reports prepared by, on behalf of, or for the use of the director; or
- (2) financial statements, balance sheets, or authorized delegate information;

are confidential and may not be disclosed or distributed outside the department by the director or any officer or employee of the department, except as provided in subsection (b).

(b) The director may provide for the release of information to representatives of state or federal agencies who state in writing under oath that they shall maintain the confidentiality of the information if:

- (1) the licensee provides consent before the release; or
- (2) the director finds that the release is reasonably necessary for the protection of the public and in the interests of justice, and the licensee has been given prior notice by the director to release the information.

(c) Nothing in this section shall prohibit the director from releasing to the public a list of persons licensed under this chapter or from releasing aggregated financial data on such licensees. *As added by P.L.42-1993, SEC.85.*

**28-8-4-48 Suspension and revocation of licenses**

Sec. 48. (a) After notice and hearing, the director may suspend or revoke a licensee's license if the director finds one (1) of the following conditions:

- (1) A fact or condition exists that, if it had existed at the time the licensee applied for a license, would have been grounds for denying the application.

- (2) The licensee's net worth becomes inadequate to meet the terms of section 24 and 33 of this chapter and the licensee, after ten (10) days written notice from the director, fails to take steps that the director considers necessary to remedy the deficiency.
  - (3) The licensee violates a material provision of this chapter or order validly promulgated by the director under authority of this chapter.
  - (4) The licensee is conducting its business in an unsafe or unsound manner as determined by the director.
  - (5) The licensee is insolvent.
  - (6) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due.
  - (7) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under the federal bankruptcy code.
  - (8) The licensee refuses to permit the director to make any examination authorized by this chapter.
  - (9) The licensee fails to make a report required by this chapter.
- (b) If the director of the department:
- (1) has just cause to believe an emergency exists from which it is necessary to protect the interests of the public; or
  - (2) determines that the license was obtained for the benefit of, or on behalf of, a person who does not qualify for a license;

the director may proceed with the revocation of the license under IC 4-21.5-3-6. *As added by P.L.42-1993, SEC.85;P.L.80-1998, SEC.20.*

### **28-8-4-48.1 Revocation**

Sec. 48.1 (a) A license issued by the department under this chapter shall be revoked by the department if the person fails to:

- (1) file any renewal form required by the department; or
- (2) pay any license renewal fee described under section 37 of this chapter;

for a period of at least two (2) years.

(b) A person whose license is revoked under this section may:

- (1) pay all delinquent fees and apply for a new license; or
- (2) appeal the revocation to the department for an administrative review under IC 4-21.5-3. Pending the decision resulting from the hearing under IC 4-21.5-3 concerning the license revocation, the license remains in force. Added by P.L.176-1996, SEC.24.

**28-8-4-49 Authorized delegates**

Sec. 49. Licensee desiring to conduct licensed activities through authorized delegates shall authorize each delegate to operate pursuant to an express written contract, which shall provide for the following:

- (1) The licensee appoints the person as its delegate with authority to sell payment instruments and accept funds to be transmitted by or on behalf of the licensee.
- (2) That neither a licensee nor an authorized delegate may authorize a subdelegate without the written consent of the director.
- (3) That licensees are subject to supervision and regulation by the director.
- (4) An acknowledgment that the authorized delegate consents to the director's inspection, with or without prior notice to the licensee or authorized delegate, of the books, records, and accounts of an authorized delegate of the licensee when the director has a reasonable basis to believe that the licensee or authorized delegate is in violation of this chapter.
- (5) That authorized delegates are under a duty to act only as authorized under the contract with the licensee and that an authorized delegate who exceeds the delegate's authority is subject to cancellation of the delegate's contract and disciplinary action by the director.

*As added by P.L.42-1993, SEC.85.*

**28-8-4-50 Compliance by authorized delegates**

Sec. 50. (a) An authorized delegate may not make any fraudulent or false statement or misrepresentation to a licensee or to the director.

(b) An authorized delegate must comply with the following:

- (1) All money transmission or sale or issuance of payment instrument activities conducted by an authorized delegate shall be strictly in accordance with the licensee's written procedures provided to the authorized delegate.
- (2) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate. The failure of an authorized delegate to remit all money owing to a licensee within the time presented shall result in liability of the authorized delegate to the licensee for three (3) times the licensee's actual damages.
- (3) All funds, less fees, received by an authorized delegate of a licensee from the sale or delivery of a payment instrument issued by a licensee or received by an authorized delegate for transmission shall, from the time the funds are received by the authorized delegate until the funds or an equivalent amount are remitted by the authorized delegate to the licensee, constitute trust funds owned by and belonging to the licensee. If an authorized delegate commingles any of the funds with any other funds or property owned or controlled by the authorized delegate, all commingled proceeds and other property shall be impressed with a trust in favor of the licensee in an amount equal to the amount of the proceeds due the licensee.
- (4) An authorized delegate shall report to the licensee the theft or loss of payment instruments not more than twenty-four (24) hours after the time the authorized delegate knew or should have known of the theft or loss.

*As added by P.L.42-1993, SEC.85.*

### **28-8-4-51 Suspension and barring of authorized delegates**

Sec. 51. (a) If, after notice and a hearing, the director finds that an authorized delegate of a licensee or a director, an officer, an employee, or a controlling person of the authorized delegate:

- (1) has violated any provision of this chapter or order issued under this chapter;
- (2) has engaged or participated in any unsafe or unsound act with respect to the business of:
  - (A) selling or issuing payment instruments of the licensee; or
  - (B) money transmission;
- (3) had made or caused to be made in an application or report filed with the director or in any proceeding before the director, any statement that was at the time and in the circumstances under which it was made, false or misleading with respect to any material fact; or
- (4) has omitted to state in an application or report filed with the director a material fact that is required to be stated therein;

the director may issue an order suspending or barring such authorized delegate from becoming or continuing to be an authorized delegate of a licensee during the period for which such order is in effect.

(b) Upon issuance of an order under subsection (a), the licensee shall terminate the licensee's relationship with the authorized delegate according to the terms of the order.

(c) Any authorized delegate to whom an order is issued under this section may apply to the director to modify or rescind the order. The director shall not grant such application unless the director finds that it is in the public interest to do so and that it is reasonable to believe that the person will, if and when the person is permitted to resume being an authorized delegate of a licensee, comply with all applicable provisions of this chapter and of any regulation and order issued under this chapter.

(d) The right of an authorized delegate to whom an order is issued under this section to petition for judicial review of an order shall not be affected by the failure of the authorized delegate to apply to the director to modify or rescind the order. *As added by P.L.42-1993, SEC.85.*

### **28-8-4-52 Hearing procedure**

Sec. 52. The provisions of IC 4-21.5 shall apply to any hearing afforded under this chapter. *As added by P.L.42-1993, SEC.85.*

### **28-8-4-53 Civil penalties**

Sec. 53. (a) If, after notice and a hearing conducted in accordance with IC 4-21.5, the director finds that a person has violated this chapter, the director may order the person to pay to the director a civil penalty in an amount specified by the director, not to exceed one thousand dollar (\$1,000) for each violation.

(b) If, after notice and a hearing conducted in accordance with IC 4-21.5, the director finds that a person is engaged in a continuing violation of this chapter, the director may order the person to pay to the director a civil penalty in an amount specified by the director, not to exceed the greater of:

- (1) one thousand dollars (\$1,000) for each day that the violation continues; or
- (2) fifty thousand dollars (\$50,000).

The provisions of IC 4-21.5 shall apply to such hearing.

(c) A penalty collected under this section shall be deposited into the financial institutions fund established by IC 28-11-2-9. *As added by P.L.42-1993, SEC.85.*

#### **28-8-4-54 Claims against licenses and authorized delegates**

Sec. 54. A claim against a licensee or its authorized delegate may be brought by:

- (1) the claimant filing suit against the security device provided for in [section 27](#) of this chapter or the deposit provided for in [section 29](#) of this chapter; or
- (2) the director filing suit on behalf of a claimant, in one (1) action or in successive actions.

*As added by P.L.42-1993, SEC.85.*

#### **28-8-4-55 Compromise, settlement, and collection of civil penalties**

Sec. 55. The director, in the exercise of reasonable judgment, is authorized to compromise, settle, and collect civil penalties from a person for a violation of:

- (1) a provision of this chapter; or
- (2) an order issued or promulgated pursuant to this chapter.

*As added by P.L.42-1993, SEC.85.*

#### **28-8-4-56 Injunctions**

Sec. 56. If it appears to the director that a person has committed or is about to commit a violation of a provision of this chapter or an order of the director, the director may apply to a court having jurisdiction for:

- (1) an order enjoining such person from violating or continuing to violate this chapter or such other order as the nature of the case may require; or
- (2) injunctive or such other relief as the nature of the case may require.

*As added by P.L.42-1993, SEC.85.*

#### **28-8-4-57 Consent orders**

Sec. 57. (a) The director may enter into a consent order with a person to resolve a matter arising under this chapter.

- (b) A consent order must comply with the following provisions:

- (1) Be signed by the person to whom it is issued or an authorized representative.
  - (2) Indicate agreement to the terms contained within the consent.
- (c) A consent order need not:
- (1) constitute an admission by a person that a provision of this chapter or an order promulgated or issued thereunder has been violated; or
  - (2) constitute a finding by the director that such person has violated a provision of this chapter or an order promulgated or issued thereunder.
- (d) Notwithstanding the issuance of a consent order, the director may seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order, unless the consent order by its terms expressly precludes the director from doing so. *As added by P.L.42-1993, SEC.85.*

### **28-8-4-58 Violations**

Sec. 58. (a) A person who knowingly or intentionally violates a provision of this chapter for which a penalty is not specifically provided commits a Class A misdemeanor.

(b) A person who knowingly or intentionally makes a material, false statement in a document filed or required to be filed under this chapter, with the intent to deceive the recipient of the document, commits a Class C felony.

(c) A person who knowingly or intentionally fails to file a document required to be filed under this chapter commits a Class C felony. *As added by P.L.42-1993, SEC.85.*

### **28-8-4-59 Rules and regulations**

Sec. 59. (a) Rules and regulations promulgated by the director pursuant to authority conferred by this chapter will be pursuant to IC 4-22-2.

(b) At the time the director files a notice of proposed adoption, amendment, or repeal of a rule for public comment under this chapter, a copy of the notice will be sent by first class mail postage prepaid to all then current licensees and applicants for licenses under this chapter. *As added by P.L.42-1993, SEC.85.*

### **28-8-4-60 Jurisdiction**

Sec. 60. A licensee, an authorized delegate, or a person who knowingly engages in business activities that are regulated under this chapter, with or without filing an application, is considered to have consented to the jurisdiction of the courts of Indiana for all actions arising under this chapter. *As added by P.L.42-1993, SEC.85.*

### **28-8-4-61 Administration of chapter**

Sec. 61. The division of consumer credit shall have charge of the administration of this chapter. *As added by P.L.42-1993, SEC.85.*

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